

COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD
REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION

9 VAC 5 CHAPTER 80.
PERMITS FOR STATIONARY SOURCES.

Part II.
Permit Procedures.

ARTICLE 8.
Permits for Major Stationary Sources and Major Modifications Locating
in Prevention of Significant Deterioration Areas.
(replaces 9 VAC 5-80-20)

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9 VAC 5-80-1700. Applicability.

A. The provisions of this article apply to the construction of any major stationary source or major modification.

B. The provisions of this article apply in prevention of significant deterioration areas designated in 9 VAC 5-20-205.

C. Where a source is constructed or modified in contemporaneous increments which individually are not subject to approval under this article and which are not part of a program of construction or modification in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of this article. An incremental change is contemporaneous with the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

D. Unless specified otherwise, the provisions of this article are applicable to various sources as follows:

1. Provisions referring to "sources," "new or modified sources" or "stationary sources" are applicable to the construction of all major stationary sources and major modifications.

2. Any emissions units not subject to the provisions of this article may be subject to the provisions of 9 VAC 5-80-10 or Article 9 (9 VAC 5-80-2000 et seq.) of this part.

E. For the purposes of this article, pollutants subject to regulation under the federal Clean Air Act shall not include any pollutant listed under § 112(b) of the federal Clean Air Act or any additions made to the list made pursuant to regulations promulgated by the U.S. Environmental Protection Agency.

F. Unless otherwise approved by the board or prescribed in these regulations, when this article is amended, the previous provisions of this article shall remain in effect for all applications that are deemed complete under the provisions of subsection A of 9 VAC 5-80-1870 prior to the effective date of the amended article. Any permit applications that have not been determined to be complete as of the effective date of the amendments shall be subject to the new provisions.

9 VAC 5-80-1710. Definitions.

A. As used in this article, all words or terms not defined herein shall have the

meaning given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

B. For the purpose of this article, 9 VAC 5-80-280 and any related use, the words or terms shall have the meaning given them in subsection C of this section:

C. Terms defined.

"Actual emissions"

a. Means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with subdivisions b through d of this definition.

b. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The board shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

c. The board may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

d. For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

"Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (i) times of visitor use of the federal class I areas, and (ii) the frequency and timing of natural conditions that reduce visibility.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally and state enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

a. The applicable standards as set forth in 40 CFR Parts 60 and 61;

b. The applicable implementation plan emissions limitation including those with a future compliance date; or

c. The emissions rate specified as a federally or state enforceable permit condition, including those with a future compliance date.

"Baseline area"

a. Means any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(C) of the federal Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than $1 \mu\text{g}/\text{m}^3$ (annual average) of the pollutant for which the minor source baseline date is established.

b. Area redesignations under Section 107(d)(3) of the federal Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(1) Establishes a minor source baseline date; or

(2) Is subject to this article or 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation.

c. Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the board rescinds the corresponding minor source baseline date in accordance with subdivision d of the definition of "Baseline date."

"Baseline concentration"

a. Means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(1) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in subdivision b of this definition;

(2) The allowable emissions of major stationary sources which commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

b. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(1) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(2) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

"Baseline date"

a. "Major source baseline date" means:

(1) In the case of particulate matter and sulfur dioxide, January 6, 1975, and

(2) In the case of nitrogen dioxide, February 8, 1988.

b. "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to this article submits a complete application under this article. The trigger date is:

(1) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(2) In the case of nitrogen dioxide, February 8, 1988.

c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(1) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(1)(C) of the federal Clean Air Act for the pollutant on the date of its complete application under this article or 40 CFR 52.21; and

(2) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

d. Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the

amount of available PM₁₀ increments, except that the board may rescind any such minor source baseline date where it can be shown, to the satisfaction of the board, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM₁₀ emissions.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each pollutant subject to regulation under the federal Clean Air Act which would be emitted from any proposed major stationary source or major modification which the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61. If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two-digit code) as described in the Standard Industrial Classification Manual (see 9 VAC 5-20-21).

"Commence" as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

b. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application. Designating an application complete for the purposes of permit processing does not preclude the board from requesting or accepting any additional information.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the federal Clean Air Act.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the implementation plan, and any permit requirements established pursuant to 40 CFR 52.21 or this chapter, including operating permits issued under an EPA-approved program that is incorporated into the implementation plan and expressly requires adherence to any permit issued under such program.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

"Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or act of Congress.

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

"Locality particularly affected" means any locality which bears any identified disproportionate material air quality impact which would not be experienced by other localities.

"Low terrain" means any area other than high terrain.

"Major modification"

a. Means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the federal Clean Air Act.

b. Any net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone.

c. A physical change or change in the method of operation shall not include:

(1) Routine maintenance, repair and replacement;

(2) Use of an alternative fuel or raw material by a stationary source which:

(a) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally and state enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or this chapter; or

(b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter;

(3) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or this chapter;

"Major stationary source"

a. Means:

(1) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the federal Clean Air Act:

(a) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(b) Coal cleaning plants (with thermal dryers).

(c) Kraft pulp mills.

(d) Portland cement plants.

(e) Primary zinc smelters.

(f) Iron and steel mill plants.

(g) Primary aluminum ore reduction plants.

(h) Primary copper smelters.

(i) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(j) Hydrofluoric acid plants.

(k) Sulfuric acid plants.

(l) Nitric acid plants.

(m) Petroleum refineries.

(n) Lime plants.

(o) Phosphate rock processing plants.

(p) Coke oven batteries.

(q) Sulfur recovery plants.

(r) Carbon black plants (furnace process).

(s) Primary lead smelters.

(t) Fuel conversion plants.

(u) Sintering plants.

(v) Secondary metal production plants.

(w) Chemical process plants.

(x) Fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input.

(y) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(z) Taconite ore processing plants.

(aa) Glass fiber processing plants.

(bb) Charcoal production plants.

(2) Notwithstanding the stationary source size specified in subdivision a (1) of this definition, stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the federal Clean Air Act; or

(3) Any physical change that would occur at a stationary source not otherwise qualifying under subdivision a (1) or a (2) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

b. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

- (5) Iron and steel mills.
- (6) Primary aluminum ore reduction plants.
- (7) Primary copper smelters.
- (8) Municipal incinerators capable of charging more than 250 tons of refuse per day.
- (9) Hydrofluoric, sulfuric, or nitric acid plants.
- (10) Petroleum refineries.
- (11) Lime plants.
- (12) Phosphate rock processing plants.
- (13) Coke oven batteries.
- (14) Sulfur recovery plants.
- (15) Carbon black plants (furnace process).
- (16) Primary lead smelters.
- (17) Fuel conversion plants.
- (18) Sintering plants.
- (19) Secondary metal production plants.
- (20) Chemical process plants.
- (21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.
- (22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
- (23) Taconite ore processing plants.
- (24) Glass fiber processing plants.
- (25) Charcoal production plants.

(26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(27) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the federal Clean Air Act.

"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations, and those air quality control laws and regulations which are part of the applicable implementation plan.

"Net emissions increase"

a. Means the amount by which the sum of the following exceeds zero:

(1) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(2) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(1) The date five years before construction on the particular change commences; and

(2) The date that the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if the board has not relied on it in issuing a permit for the source under this article (or the administrator under 40 CFR 52.21), which permit is in effect when the increase in actual emissions from the particular change occurs.

d. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM₁₀ emissions can be used to evaluate the net emissions

increase for PM₁₀.

e. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

f. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is federally and state enforceable at and after the time that actual construction on the particular change begins; and

(3) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

g. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant"

a. Means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (TSP)	25 tpy
PM ₁₀	15 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	7 tpy
Hydrogen Sulfide (H ₂ S)	10 tpy
Total Reduced Sulfur (including H ₂ S)	10 tpy
Reduced Sulfur Compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 ⁻⁶ tpy
Municipal waste combustor metals (measured as particulate matter)	15 tpy
Municipal waste combustor acid gases (measured as the sum of SO ₂ and HCl)	40 tpy

b. Means, in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the federal Clean Air Act that subdivision a of this definition does not list, any emissions rate.

c. Notwithstanding subdivision a of this definition, means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a class I area, and have an impact on such area equal to or greater than 1 µg/m³ (24-hour average).

"Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the federal Clean Air Act.

9 VAC 5-80-1720. General.

A. No owner or other person shall begin actual construction of any major stationary source or major modification without first obtaining from the board a permit to construct and operate such source.

B. No owner or other person shall relocate any emissions unit subject to the provisions of 9 VAC 5-20-160 without first obtaining a permit from the board to relocate the unit.

C. Prior to the decision of the board, all permit applications will be subject to a public comment period, a public hearing will be held as provided in 9 VAC 5-80-1870.

D. The board may combine the requirements of and the permits for emissions units within a stationary source subject to 9 VAC 5-80-10, Article 9 (9 VAC 5-80-2000 et seq.) of this part, and this article into one permit. Likewise the board may require that applications for permits for emissions units within a stationary source required by 9 VAC 5-80-10, Article 9 (9 VAC 5-80-2000 et seq.) of this part, and this article be combined into one application.

9 VAC 5-80-1730. Ambient air increments.

In areas designated as class I, II or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

MAXIMUM ALLOWABLE INCREASE
(micrograms per cubic meter)

Class I

Particulate matter:

PM ₁₀ , annual arithmetic mean	4
PM ₁₀ , twenty-four hour maximum	8

Sulfur dioxide:

Annual arithmetic mean	2
Twenty-four hour maximum	5
Three-hour maximum	25

Nitrogen dioxide:

Annual arithmetic mean	2.5
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Class II

Particulate matter:

PM ₁₀ , annual arithmetic mean	17
PM ₁₀ , twenty-four hour maximum	30

Sulfur dioxide:

Annual arithmetic mean	20
Twenty-four hour maximum	91
Three-hour maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25

Class III

Particulate matter:	
PM ₁₀ , annual geometric mean	34
PM ₁₀ , twenty-four hour maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
Twenty-four hour maximum	182
Three-hour maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

9 VAC 5-80-1740. Ambient air ceilings.

No concentration of a pollutant shall exceed:

- A. The concentration permitted under the national secondary ambient air quality standard, or
- B. The concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

9 VAC 5-80-1750. Applications.

A. A single application is required identifying at a minimum each emissions point within the emissions unit subject to this article. The application shall be submitted according to procedures approved by the board. However, where several emissions units are included in one project, a single application covering all units in the project may be submitted. A separate application is required for each location.

B. For projects with phased development, a single application may be submitted covering the entire project.

C. Any application form, report, or compliance certification submitted to the board shall be signed by a responsible official. A responsible official is defined as follows:

1. For a business entity, such as a corporation, association or cooperative, a responsible official is either:

a. The president, secretary, treasurer, or a vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the business entity; or

b. A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either (i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), or (ii) the authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity.

2. For a partnership or sole proprietorship, a responsible official is a general partner or the proprietor, respectively.

3. For a municipality, state, federal, or other public agency, a responsible official is either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

D. Any person signing a document under subsection C of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

E. Subsection D of this section shall be interpreted to mean that the signer must have some form of direction or supervision over the persons gathering the data and preparing the document (the preparers), although the signer need not personally nor directly supervise these activities. The signer need not be in the same line of authority as the preparers, nor do the persons gathering the data and preparing the form need to be employees (e.g., outside contractors can be used). It is sufficient that the signer has authority to assure that the necessary actions are taken to prepare a complete and accurate document.

F. Unless waived under § 10.1-1321.1 of the Virginia Air Pollution Control Law, applications shall not be deemed complete unless the applicant has provided a notice from the locality in which the source is located or is to be located that the site and operation of the source are consistent with all local ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.

9 VAC 5-80-1760. Compliance with local zoning requirements.

The owner shall comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the board of its duty under 9 VAC 5-20-140 of these regulations and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

9 VAC 5-80-1770. Compliance determination and verification by performance testing.

A. For stationary sources other than those specified in subsection B of this section, compliance with standards of performance shall be determined in accordance with the provisions of 9 VAC 5-50-20 and shall be verified by performance tests in accordance with the provisions of 9 VAC 5-50-30.

B. For stationary sources of hazardous air pollutants, compliance with emission standards shall be determined in accordance with the provisions of 9 VAC 5-60-20 and shall be verified by emission tests in accordance with the provisions of 9 VAC 5-60-30.

C. Testing required by subsections A and B of this section shall be conducted within 60 days by the owner after achieving the maximum production rate at which the new or modified source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the board shall be provided by the owner with two or, upon request, more copies of a written report of the results of the tests.

D. For sources subject to the provisions of Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50 or Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60, the requirements of subsections A through C of this section shall be met in all cases.

E. For sources other than those specified in subsection D of this section, the requirements of subsections A through C of this section shall be met unless the board:

1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;
2. Approves the use of an equivalent method;

3. Approves the use of an alternative method, the results of which the board has determined to be adequate for indicating whether a specific source is in compliance;

4. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the board reasonably expects the new or modified source to perform in compliance with applicable standards; or

5. Waives the requirement for testing because the owner of the source has demonstrated by other means to the board's satisfaction that the source is in compliance with the applicable standard.

F. The provisions for the granting of waivers under subsection E of this section are intended for use in determining the initial compliance status of a source, and the granting of a waiver does not obligate the board to do so for determining compliance once the source has been in operation for more than one year beyond the initial startup date.

9 VAC 5-80-1780. Stack heights.

The provisions of 9 VAC 5-50-20 H apply.

9 VAC 5-80-1790. Review of major stationary sources and major modifications - source applicability and exemptions.

A. No stationary source or modification to which the requirements of 9 VAC 5-80-1800 through 9 VAC 5-80-1880 apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements. The board has authority to issue any such permit.

B. The requirements of 9 VAC 5-80-1800 through 9 VAC 5-80-1880 shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the federal Clean Air Act that it would emit, except as this article otherwise provides.

C. The requirements of 9 VAC 5-80-1800 through 9 VAC 5-80-1880 apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable under Section 107(d)(1)(C) of the federal Clean Air Act.

D. The requirements of 9 VAC 5-80-1800 through 9 VAC 5-80-1880 shall not apply to a particular major stationary source or major modification; if:

1. The source or modification would be a nonprofit health or nonprofit

educational institution, or a major modification would occur at such an institution; or

2. The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

- a. Coal cleaning plants (with thermal dryers).
- b. Kraft pulp mills.
- c. Portland cement plants.
- d. Primary zinc smelters.
- e. Iron and steel mills.
- f. Primary aluminum ore reduction plants.
- g. Primary copper smelters.
- h. Municipal incinerators capable of charging more than 250 tons of refuse per day.
- i. Hydrofluoric acid plants.
- j. Sulfuric acid plants.
- k. Nitric acid plants.
- l. Petroleum refineries.
- m. Lime plants.
- n. Phosphate rock processing plants.
- o. Coke oven batteries.
- p. Sulfur recovery plants.
- q. Carbon black plants (furnace process).
- r. Primary lead smelters.
- s. Fuel conversion plants.

- t. Sintering plants.
 - u. Secondary metal production plants.
 - v. Chemical process plants.
 - w. Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.
 - x. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
 - y. Taconite ore processing plants.
 - z. Glass fiber processing plants.
 - aa. Charcoal production plants.
 - bb. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.
 - cc. Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Federal Clean Air Act; or
3. The source or modification is a portable stationary source which has previously received a permit under this article, and
- a. The owner proposes to relocate the source and emissions of the source at the new location would be temporary; and
 - b. The emissions from the source would not exceed its allowable emissions; and
 - c. The emissions from the source would impact no class I area and no area where an applicable increment is known to be violated; and
 - d. Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the board.
- E. The requirements of 9 VAC 5-80-1800 through 9 VAC 5-80-1880 shall not apply to a major stationary source or major modification with respect to a particular

pollutant if the owner demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under Section 107 of the federal Clean Air Act.

F. The requirements of 9 VAC 5-80-1810, 9 VAC 5-80-1830, and 9 VAC 5-80-1850 shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

1. Would impact no class I area and no area where an applicable increment is known to be violated, and
2. Would be temporary.

G. The requirements of 9 VAC 5-80-1810, 9 VAC 5-80-1830, and 9 VAC 5-80-1850 as they relate to any maximum allowable increase for a class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulation under the federal Clean Air Act from the modification after the application of best available control technology would be less than 50 tons per year.

H. The board may exempt a stationary source or modification from the requirements of 9 VAC 5-80-1830 with respect to monitoring for a particular pollutant if:

1. The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide - 575 $\mu\text{g}/\text{m}^3$, 8-hour average
Nitrogen dioxide - 14 $\mu\text{g}/\text{m}^3$, annual average
Particulate matter - 10 $\mu\text{g}/\text{m}^3$ of PM_{10} , 24-hour average
Sulfur dioxide - 13 $\mu\text{g}/\text{m}^3$, 24-hour average
Ozone¹
Lead - 0.1 $\mu\text{g}/\text{m}^3$, 3-month average
Fluorides - 0.25 $\mu\text{g}/\text{m}^3$, 24-hour average
Total reduced sulfur - 10 $\mu\text{g}/\text{m}^3$, 1-hour average
Hydrogen sulfide - 0.2 $\mu\text{g}/\text{m}^3$, 1-hour average
Reduced sulfur compounds - 10 $\mu\text{g}/\text{m}^3$, 1-hour average; or

2. The concentrations of the pollutant in the area that the source or

¹ No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to this article would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

modification would affect are less than the concentrations listed in subsection H 1 of this subdivision, or the pollutant is not listed in subsection H 1 of this subdivision.

I. The permitting requirements of subsection B of 9 VAC 5-80-1810 shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM₁₀ if:

1. The owner of the source or modification submitted an application for a permit under 9 VAC 5-80-10, Article 9 (9 VAC 5-80-2000 et seq.) of this part, or this article before June 3, 1994, and

2. The board subsequently determined that the application as submitted before that date was complete. Instead, the applicable requirements of subsection B of 9 VAC 5-80-1810 shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.

9 VAC 5-80-1800. Control technology review.

A. A major stationary source or major modification shall meet each applicable emissions limitation under the implementation plan and each applicable emissions standard and standard of performance under 40 CFR Parts 60 and 61.

B. A new major stationary source shall apply best available control technology for each pollutant subject to regulation under the federal Clean Air Act that it would have the potential to emit in significant amounts.

C. A major modification shall apply best available control technology for each pollutant subject to regulation under the federal Clean Air Act for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

D. For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

9 VAC 5-80-1810. Source impact analysis.

The owner of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

A. Any national ambient air quality standard in any air quality control region;
or

B. Any applicable maximum allowable increase over the baseline concentration in any area.

9 VAC 5-80-1820. Air quality models.

A. All applications of air quality modeling involved in this article shall be based on the applicable air quality models, data bases, and other requirements specified in Appendix W to 40 CFR Part 51.

B. Where an air quality impact model specified in Appendix W to 40 CFR Part 51 is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis, or, where appropriate, on a generic basis for a specific state program. Written approval of the administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with 9 VAC 5-80-1870.

9 VAC 5-80-1830. Air quality analysis.

A. Preapplication analysis.

1. Any application for a permit under this article shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

a. For the source, each pollutant that it would have the potential to emit in a significant amount;

b. For the modification, each pollutant for which it would result in a significant net emissions increase.

2. With respect to any such pollutant for which no national ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the board determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

3. With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

4. In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the board determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

5. The owner of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of Section IV of Appendix S to 40 CFR Part 51 may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under subsection A of this section.

B. Post-construction monitoring.

The owner of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the board determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

C. Operation of monitoring stations.

The owner of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR Part 58 during the operation of monitoring stations for purposes of satisfying this section.

9 VAC 5-80-1840. Source information.

The owner of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this article.

A. With respect to a source or modification to which 9 VAC 5-80-1800, 9 VAC 5-80-1810, 9 VAC 5-80-1830, and 9 VAC 5-80-1850 apply, such information shall include:

1. A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

2. A detailed schedule for construction of the source or modification;

3. A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other

information necessary to determine that best available control technology would be applied.

B. Upon request of the board, the owner shall also provide information on:

1. The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

2. The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since the baseline date in the area the source or modification would affect.

9 VAC 5-80-1850. Additional impact analyses.

A. The owner shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

B. The owner shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

C. The board may require monitoring of visibility in any federal class I area near the proposed new stationary source or major modification for such purposes and by such means as the board deems necessary and appropriate.

9 VAC 5-80-1860. Sources impacting federal class I areas - additional requirements.

A. Notice to administrator.

The board shall transmit to the administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the administrator of the following actions related to the consideration of such permit:

1. Notification of the permit application status as provided in subsection A of 9 VAC 5-80-1870.

2. Notification of the public comment period on the application as provided in subsection F 5 of 9 VAC 5-80-1870.

3. Notification of the final determination on the application and issuance of the permit as provided in subsection F 9 of 9 VAC 5-80-1870.

4. Notification of any other action deemed appropriate by the board.

B. Notice to federal land managers.

The board shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a class I area, to the federal land manager and the federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the federal class I area. The board shall also provide the federal land manager and such federal officials with a copy of the preliminary determination required under subsection R of 9 VAC 5-80-1870, and shall make available to them any materials used in making that determination, promptly after the board makes such determination. Finally, the board shall also notify all affected federal land managers within 30 days of receipt of any advance notification of any such permit application.

C. Federal land manager.

The federal land manager and the federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the board, whether a proposed source or modification will have an adverse impact on such values.

D. Visibility analysis.

The board shall consider any analysis performed by the federal land manager, provided within 30 days of the notification required by subsection B of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any federal class I area. Where the board finds that such an analysis does not demonstrate to the satisfaction of the board that an adverse impact on visibility will result in the federal class I area, the board must, in the notice of public hearing on the permit application, either explain this decision or give notice as to where the explanation can be obtained.

E. Denial - impact on air quality related values.

The federal land manager of any such lands may demonstrate to the board that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source

or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a class I area. If the board concurs with such demonstration, then it shall not issue the permit.

F. Class I variances.

The owner of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a class I area. If the federal land manager concurs with such demonstration and so certifies, the board may, provided that the applicable requirements of this article are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

MAXIMUM ALLOWABLE INCREASE
(micrograms per cubic meter)

Particulate matter:

PM ₁₀ , annual geometric mean	17
PM ₁₀ , twenty-four hour maximum	30

Sulfur dioxide:

Annual arithmetic mean	20
Twenty-four hour maximum	91
Three-hour maximum	325

Nitrogen dioxide:

Annual arithmetic mean	25
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G. Sulfur dioxide variance by governor with federal land manager's concurrence.

The owner of a proposed source or modification which cannot be approved under subsection F of this section may demonstrate to the governor that the source cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of twenty-four hours or less applicable to any class I area and, in the case of federal mandatory class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The governor, after consideration of the federal land manager's recommendation (if any) and subject to the federal land manager's concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the board shall issue a permit to such source or modification pursuant to the

requirements of subsection I of this section, provided that the applicable requirements of this article are otherwise met.

H. Variance by the governor with the president's concurrence.

In any case whether the governor recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the president. The president may approve the governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the board shall issue a permit pursuant to the requirements of subsection I of this section, provided that the applicable requirements of this article are otherwise met.

I. Emission limitations for presidential or gubernatorial variance.

In the case of a permit issued pursuant to subsection G or H of this section the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

MAXIMUM ALLOWABLE INCREASE
(micrograms per cubic meter)

Period of exposure	Low terrain areas	High terrain areas
24-hour maximum	36	62
3-hour maximum	130	221

9 VAC 5-80-1870. Public participation.

A. Within 30 days after receipt of an application, the board shall notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application shall be provided by the board in writing and shall include (i) a determination as to which provisions of this chapter are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board shall notify the applicant of any deficiencies in such

information. The date of receipt of a complete application shall be, for the purpose of this article, the date on which the board received all required information.

B. No later than 30 days after receiving the initial determination notification required under subsection A of this section, the applicant shall notify the public about the proposed source as required in subsection C of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subsection D of this section.

C. The public notice required under subsection B of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the name, location, and type of the source, and the time and place of the informational briefing.

D. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. The applicant shall inform the public about the operation and potential air quality impact of the source and answer any questions concerning air quality about the proposed source from those in attendance at the briefing. At a minimum, the applicant shall provide information on and answer questions about (i) specific pollutants and the total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the board shall attend and provide information and answer questions on the permit application review process.

E. Upon a determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subsection C of this section and for providing the informational briefing as required in subsection D of this section.

F. Within one year after receipt of a complete application, the board shall make a final determination on the application. This involves performing the following actions in a timely manner:

1. Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

2. Make available in at least one location in each air quality control region in which the proposed source or modification would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination and a copy or summary of other materials, if any, considered in making the preliminary determination.

3. If appropriate, hold a public briefing on the preliminary determination prior to the public comment period but no later than the day before the

beginning of the public comment period. The board shall notify the public of the time and place of the briefing, by advertisement in a newspaper of general circulation in the air quality control region in which the proposed source or modification would be constructed. The notification shall be published at least 30 days prior to the day of the briefing.

4. Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment. The notification shall contain a statement of the estimated local impact of the proposed source or modification, which at a minimum shall provide information regarding specific pollutants and the total quantity of each which may be emitted, and shall list the type and quantity of any fuels to be used. The notification shall be published at least 30 days prior to the day of the hearing. Written comments shall be accepted by the board for at least 15 days after any hearing, unless the board votes to shorten the period.

5. Send a copy of the notice of public comment to the applicant, the administrator and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: local air pollution control agencies, the chief elected official and chief administrative officer of the city and county where the source or modification would be located and any other locality particularly affected, the planning district commission, and any state, federal land manager, or indian governing body whose lands may be affected by emissions from the source or modification.

6. Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

7. Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The board shall consider the applicant's response in making a final decision. The board shall make all comments available for public inspection in the same locations where the board made available preconstruction information relating to the proposed source or modification.

8. Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this article.

9. Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the board

made available preconstruction information and public comments relating to the source or modification.

9 VAC 5-80-1880. Source obligation.

A. Any owner who constructs or operates a source or modification not in accordance (i) with the application submitted pursuant to this article or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this article who commences construction or operation after the effective date of these regulations without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in 9 VAC 5-80-1950.

B. Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The board may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

C. Approval to construct shall not relieve any owner of the responsibility to comply fully with applicable provisions of the implementation plan and any other requirements under local, state or federal law.

D. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980 on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of 9 VAC 5-80-1800 through 9 VAC 5-80-1880 shall apply to the source or modification as though construction had not yet commenced on the source or modification.

9 VAC 5-80-1890. Environmental impact statements.

Whenever any proposed source or modification is subject to action by a federal agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review conducted pursuant to this article shall be coordinated by the administrator with the broad environmental reviews under that Act and under Section 309 of the federal Clean Air Act to the maximum extent feasible and reasonable.

9 VAC 5-80-1900. Disputed permits.

If a permit is proposed to be issued for any major stationary source or major modification proposed for construction in any state which the governor of an affected state or indian governing body of an affected tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected state or indian reservation, the governor or indian governing body may request the administrator to enter into negotiations with the persons involved to resolve such dispute. If requested by any state or indian governing body involved, the administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the persons involved do not reach agreement, the administrator shall resolve the dispute. The administrator's determination, or the results of agreements reached through other means, shall become part of the applicable implementation plan and shall be enforceable as part of such plan.

9 VAC 5-80-1910. Interstate pollution abatement.

A. The owner of each source or modification, which may significantly contribute to levels of air pollution in excess of an ambient air quality standard in any air quality control region outside the Commonwealth, shall provide written notice to all nearby states of the air pollution levels which may be affected by such source at least 60 days prior to the date of commencement of construction.

B. Any state or political subdivision may petition the administrator for a finding that any source or modification emits or would emit any air pollutant in amounts which will prevent attainment or maintenance of any ambient air quality standard or interfere with measures for the prevention of significant deterioration or the protection of visibility in the implementation plan for such state. Within 60 days after receipt of such petition and after a public hearing, the administrator will make such a finding or deny the petition.

C. Notwithstanding any permit granted pursuant to this article, no owner or other person shall commence construction or modification or begin operation of a source to which a finding has been made under the provisions of subsection B of this section.

9 VAC 5-80-1920. Innovative control technology.

A. Prior to the close of the public comment period under 9 VAC 5-80-1870, an owner of a proposed major stationary source or major modification may request, in writing, that the board approve a system of innovative control technology.

B. The board, with the consent of the governor(s) of affected state(s), shall determine that the source or modification may employ a system of innovative control technology, if:

1. The proposed control system would not cause or contribute to an

unreasonable risk to public health, welfare, or safety in its operation or function;

2. The owner agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under subsection B of 9 VAC 5-80-1800 by a date specified by the board. Such date shall not be later than 4 years from the time of startup or 7 years from permit issuance;

3. The source or modification would meet the requirements of 9 VAC 5-80-1800 and 9 VAC 5-80-1810 based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the board;

4. The source or modification would not, before the date specified by the board:

(a) Cause or contribute to a violation of an applicable national ambient air quality standard; or

(b) Impact any area where an applicable increment is known to be violated;

5. All other applicable requirements including those for public participation have been met; and

6. The provisions of 9 VAC 5-80-1860 (relating to class I areas) have been satisfied with respect to all periods during the life of the source or modification.

C. The board shall withdraw any approval to employ a system of innovative control technology made under this article, if:

1. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

2. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

3. The board decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

D. If a source or modification fails to meet the requirement level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subsection C of this section, the board may allow the source or modification up to an additional 3 years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

9 VAC 5-80-1930. Reactivation and permanent shutdown.

A. The reactivation of a stationary source is not subject to provisions of this article unless a decision concerning shutdown has been made pursuant to the provisions of subsections B through D of this section or 9 VAC 5-80-40 P 5.

B. Upon a final decision by the board that a stationary source is shut down permanently, the board shall revoke the permit by written notification to the owner and remove the source from the emission inventory or consider its emissions to be zero in any air quality analysis conducted; and the source shall not commence operation without a permit being issued under the applicable provisions of this chapter.

C. The final decision shall be rendered as follows:

1. Upon a determination that the source has not operated for a year or more, the board shall provide written notification to the owner (i) of its tentative decision that the source is considered to be shut down permanently; (ii) that the decision shall become final if the owner fails to provide, within three months of the notice, written response to the board that the shutdown is not to be considered permanent; and (iii) that the owner has a right to a formal hearing on this issue before the board makes a final decision. The response from the owner shall include the basis for the assertion that the shutdown is not to be considered permanent and a projected date for restart-up of the source and shall include a request for a formal hearing if the owner wishes to exercise that right.

2. If the board should find that the basis for the assertion is not sound or the projected restart-up date allows for an unreasonably long period of inoperation, the board shall (i) hold a formal hearing on the issue, if one is requested; or (ii) render a final decision to consider the shutdown permanent, if no hearing is requested.

D. Nothing in these regulations shall be construed to prevent the board and the owner from making a mutual determination that a source is shut down permanently prior to any final decision rendered under subsection C of this section.

9 VAC 5-80-1940. Transfer of permits.

A. No person shall transfer a permit from one location to another, or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer.

C. In the case of a name change of a stationary source, the owner shall

abide by any current permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change.

D. The provisions of this section concerning the transfer of a permit from one location to another should not apply to the relocation of portable facilities that are exempt from the provisions of 9 VAC 5-80-1800 through 9 VAC 5-80-1880 by 9 VAC 5-80-1790 D 3.

9 VAC 5-80-1950. Permit invalidation, revocation, and enforcement.

A. Permits issued under this article shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all applicable requirements of the regulations.

B. The board may revoke any permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments thereto;

2. Fails to comply with the terms or conditions of the permit;

3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

4. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the implementation plan in effect at the time that an application is submitted; or

5. Fails to comply with the applicable provisions of this article.

C. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation contained in subsection B of this section or for any other violations of these regulations.

D. Violation of these regulations shall be grounds for revocation of permits issued under this article and are subject to the civil charges, penalties and all other relief contained in 9 VAC 5 Chapter 20 (9 VAC 5-20-10 et seq.) and the Virginia Air Pollution Control Law.

E. The board shall notify the applicant in writing of its decision, with its reasons to change, suspend or revoke a permit, or to render a permit invalid.

9 VAC 5-80-1960. Circumvention.

Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this section by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.

9 VAC 5-80-1970. Review and confirmation of this chapter by board.

A. Prior to January 1, 2000, the department shall perform an analysis of this article and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the article, (ii) alternatives which would achieve the stated purpose of this article in a less burdensome and less intrusive manner, (iii) an assessment of the effectiveness of this article, (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this article which are more stringent than federal requirements, and (v) the results of a review as to whether this article is clearly written and easily understandable by affected entities.

B. Upon review of the department's analysis, the board shall confirm the need to (i) continue this article without amendment, (ii) repeal of this article, or (iii) amend this article. If the board's decision is to repeal or amend this article, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.

HISTORICAL NOTES:

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